

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

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|-------------------------|---|------------------------------------|
| WWP, INC., |) | Case No. 8:07-cv-00370-LES-FG3 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM BRIEF IN |
| |) | SUPPORT OF MOTION FOR ENTRY |
| WOUNDED WARRIORS FAMILY |) | OF PARTIAL SATISFACTION OF |
| SUPPORT, INC., |) | JUDGMENT |
| |) | |
| Defendant. |) | |

On or about October 22, 2009, the Court entered judgment in favor of Plaintiff, WWP, Inc., and against Defendant, Wounded Warriors Family Support, Inc., in the total amount of \$1,692,719.00. *See* filing no. 332. Subsequently, Plaintiff has collected various amounts in partial satisfaction of said judgment through garnishment, execution and voluntary payment from Defendant, although a dispute between the parties has arisen with respect to Plaintiff's refusal to acknowledge and provide Plaintiff with full credit for all amounts paid. Therefore, Defendant has filed its Motion for Partial Satisfaction of Judgment seeking the Court's order acknowledging Defendant's partial satisfaction of the judgment entered against it in the total amount to date of \$898,241.73 itemized as follows:

I. PARTIAL SATISFACTION AS A RESULT OF GARNISHMENTS

a. PayPal, Inc. Garnishment – July 9, 2010 – \$867.05.

On or about April 5, 2010 and upon Plaintiff's application (filing no. 374), the Court issued Garnishment Interrogatories (filing no. 380) upon PayPal, Inc. with respect to Defendant's accounts and/or property held by PayPal, Inc. On or about May 25, 2010 and upon Answers to Garnishment Interrogatories filed by PayPal, Inc. (filing no. 393) and upon Plaintiff's application

(filing no. 401), the Court entered an Order (filing no. 415) directing that Defendant's non-exempt funds held by PayPal, Inc. in the amount of \$867.05 be transferred to the Court for payment to Plaintiff. On or about July 9, 2010 and upon the deposit by PayPal, Inc. of \$867.05 with the Clerk of Court and upon Plaintiff's application (filing no. 446), the Court entered an Order (filing no. 450) directing the release of \$867.05 deposited by PayPal, Inc. with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

b. D.A. Davidson & Co. Garnishment – July 9, 2010 – \$182,503.56.

On or about April 5, 2010 and upon Plaintiff's application (filing no. 378), the Court issued Garnishment Interrogatories (filing no. 384) upon D.A. Davidson & Co. with respect to Defendant's accounts and/or property held by D.A. Davidson & Co. On or about May 25, 2010 and upon Answers to Garnishment Interrogatories filed by D.A. Davidson & Co. (filing no. 396) and upon Plaintiff's application (filing no. 402), the Court entered an Order (filing no. 418) directing that Defendant's non-exempt funds held by D.A. Davidson & Co. be transferred to the Court for payment to Plaintiff. On or about July 9, 2010 and upon the deposit by D.A. Davidson & Co. of \$182,503.56 with the Clerk of Court and upon Plaintiff's application (filing no. 446), the Court entered an Order (filing no. 450) directing the release of \$182,503.56 deposited by D.A. Davidson & Co. with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

c. Cattle National Bank & Trust Co. Garnishment – August 12, 2010 – \$5,468.17.

On or about June 22, 2010 and upon Plaintiff's application (filing no. 427), the Court issued Garnishment Interrogatories (filing no. 430) upon Cattle National Bank & Trust Co. with

respect to Defendant's accounts and/or property held by Cattle National Bank & Trust Co. On or about July 12, 2010 and upon Answers to Garnishment Interrogatories filed by Cattle National Bank & Trust Co. (filing no. 441) and upon Plaintiff's application (filing no. 447), the Court entered an Order (filing no. 452) directing that Defendant's non-exempt funds held by Cattle National Bank & Trust Co. in the amount of \$5,468.17 be transferred to the Court for payment to Plaintiff. On or about July 9, 2010 and upon the deposit by Cattle National Bank & Trust Co. of \$5,468.17 with the Clerk of Court and upon Plaintiff's application (filing no. 460), the Court entered an Order (filing no. 461) directing the release of \$5,468.17 deposited by Cattle National Bank & Trust Co. with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

d. Security First Bank Garnishment – August 12, 2010 – \$1,755.89.

On or about June 22, 2010 and upon Plaintiff's application (filing no. 428), the Court issued Garnishment Interrogatories (filing no. 431) upon Security First Bank with respect to Defendant's accounts and/or property held by Security First Bank. On or about July 12, 2010 and upon Answers to Garnishment Interrogatories filed by Security First Bank (filing no. 445) and upon Plaintiff's application (filing no. 451), the Court entered an Order (filing no. 453) directing that Defendant's non-exempt funds held by Security First Bank in the amount of \$1,755.89 be transferred to the Court for payment to Plaintiff. On or about July 9, 2010 and upon the deposit by Security First Bank of \$1,755.89 with the Clerk of Court and upon Plaintiff's application (filing no. 460), the Court entered an Order (filing no. 461) directing the release of \$1,755.89 deposited by Security First Bank with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

e. Great Western Bank Garnishment – August 12, 2010 – \$6,399.99.

On or about April, 2010 and upon Plaintiff's application (filing no. 373), the Court issued Garnishment Interrogatories (filing no. 379) upon Great Western Bank with respect to Defendant's accounts and/or property held by Great Western Bank. On or about July 16, 2010 and upon Answers to Garnishment Interrogatories filed by Great Western Bank (filing no. 395) and upon Plaintiff's application (filing no. 447), the Court entered an Order (filing no. 456) directing that Defendant's non-exempt funds held by Great Western Bank in the amount of \$6,399.99 be transferred to the Court for payment to Plaintiff. On or about July 9, 2010 and upon the deposit by Great Western Bank of \$6,399.99 with the Clerk of Court and upon Plaintiff's application (filing no. 460), the Court entered an Order (filing no. 461) directing the release of \$6,399.99 deposited by Great Western Bank with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

f. Morgan Stanley Smith Barney Garnishment – August 12, 2010 – \$206,619.00.

On or about June 22, 2010 and upon Plaintiff's application (filing no. 429), the Court issued Garnishment Interrogatories (filing no. 432) upon Morgan Stanley Smith Barney with respect to Defendant's accounts and/or property held by Morgan Stanley Smith Barney. On or about July 16, 2010 and upon Answers to Garnishment Interrogatories filed by Morgan Stanley Smith Barney (filing no. 454) and upon Plaintiff's application (filing no. 455), the Court entered an Order (filing no. 458) directing that Defendant's non-exempt funds held by Morgan Stanley Smith Barney in the amount of \$206,619.00 be transferred to the Court for payment to Plaintiff. On or about July 9, 2010 and upon the deposit by Morgan Stanley Smith Barney of \$206,619.00

with the Clerk of Court and upon Plaintiff's application (filing no. 460), the Court entered an Order (filing no. 461) directing the release of \$206,619.00 deposited by Morgan Stanley Smith Barney with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

g. Great Western Bank – January 6, 2011 – \$25,986.97.

On or about November 2, 2010 and upon Plaintiff's application (filing no. 462), the Court issued Garnishment Interrogatories (filing no. 464) upon Great Western Bank with respect to Defendant's accounts and/or property held by Great Western Bank. On or about December 8, 2010 and upon Answers to Garnishment Interrogatories filed by Great Western Bank (filing nos. 470 & 471) and upon Plaintiff's application (filing no. 472), the Court entered an Order (filing no. 473) directing that Defendant's non-exempt funds held by Great Western Bank in the amount of \$25,986.94 be transferred to the Court for payment to Plaintiff. On or about January 6, 2011 and upon the deposit by Great Western Bank of \$25,986.94 with the Clerk of Court and upon Plaintiff's application (filing no. 474), the Court entered an Order (filing no. 475) directing the release of \$25,986.94 deposited by Great Western Bank with the Clerk of Court to Plaintiff in partial satisfaction of the judgment entered against Defendant herein.

h. Great Western Bank – July 20, 2011 – \$7,641.10.

On or about March 17, 2011 and upon Plaintiff's application (filing no. 481), the Court issued Garnishment Interrogatories (filing no. 472) upon Great Western Bank with respect to Defendant's accounts and/or property held by Great Western Bank. In its response (filing no. 483) to the said Garnishment Interrogatories, Great Western Bank indicated that they had

\$7,641.10 on deposit at the time the Garnishment Interrogatories were received, but that Great Western Bank had \$57,867.61 on deposit at the time they responded to the Garnishment Interrogatories. Upon Plaintiff's application (filing no. 486), the Court entered an Order (filing no. 487) directing that Defendant's non-exempt funds held by Great Western Bank in the amount of \$57,867.61 be transferred to the Court for payment to Plaintiff. Despite the Court's order and per the advice of Plaintiff's counsel (filing no. 488), Great Western Bank has not withheld \$57,867.61 from Defendant's account, but rather, the bank was only withheld \$7,641.10, representing the amount Defendant had on deposit with Great Western Bank at the time the Garnishment Interrogatories were served upon it.

II. PARTIAL SATISFACTION AS A RESULT OF EXECUTION

On or about November 16, 2009, Plaintiff registered a copy of the Court's Order and Judgment dated October 22, 2009 (filing no. 332) with the District Court of Dawes County, Nebraska in a matter captioned *WWP, Inc. v. Wounded Warriors, Inc.* and found at Case No. CI 09-117 (hereinafter the "Dawes County Registration"). See Affidavit of D.C. Bradford dated August 15, 2011 (hereinafter "Bradford Aff."), a copy of which appears as Exhibit 1 to the Index of Evidence in support of Defendant's Motion which has been filed contemporaneously herewith, ¶ 2 and Exhibit A thereto. On or about November 18, 2010, the District Court of Dawes County issued an Execution instructing the Sheriff of Dawes County, Nebraska to collect Defendant's assets located in said county in satisfaction of the Court's judgment herein including any real property owned by Defendant in said county. See Bradford Aff. ¶ 3 and Exhibit B thereto. Pursuant to the Dawes County court's Execution (Exhibit B), the Dawes County Sheriff seized real property owned by Defendant in Dawes County, Nebraska, selling same at public

auction on or about February 4, 2011 for the high bid of \$61,000.00, which sale was subsequently confirmed by the District Court of Dawes County by order dated February 24, 2011. *See* Bradford Aff. ¶ 4 and Exhibit C thereto. All funds from the Sheriff's sale of Defendant's Dawes County real property have been delivered to Plaintiff in partial satisfaction of the judgment rendered against Defendant herein. *See* Bradford Aff. ¶ 5.

III. PARTIAL SATISFACTION AS A RESULT OF PAYMENT

On or about June 20, 2011, Defendant's counsel requested of Plaintiff's how counsel how best to make payment of \$400,000.00 to Plaintiff in further satisfaction of the judgment entered against Defendant herein. *See* Bradford Aff. ¶ 6 and Exhibit D thereto. On or about June 21, 2011, Plaintiff's counsel indicated that payment by wire transfer was preferable and further provided wire transfer instructions to Defendant's counsel. *Id.* On or about June 21, 2011 and pursuant to instructions provided by Plaintiff's counsel, Defendant's counsel wired \$400,000.00 from his trust account using account information provided by Plaintiff's counsel in further satisfaction of the judgment rendered against Defendant in the above-captioned matter *See* Bradford Aff. ¶ 7 and Exhibit E thereto.

CONCLUSION

For the above and foregoing reasons, Defendant, Wounded Warriors Family Support, Inc., respectfully requests that the Court enter an order acknowledging Defendant's partial satisfaction of the judgment entered against it in the total amount to date of \$898,241.73.

DATED this 15th day of August, 2011.

WOUNDED WARRIORS FAMILY
SUPPORT, INC., Defendant

By: s/Justin D. Eichmann

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2011, I electronically filed the foregoing Memorandum Brief with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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